FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.960 OF 1997

Mr.Ross Deas)
Indian Inhabitant, residing at)
271/A, Twin Towers, Prabhadevi)
Bombay-400 025)..Petitioner

Versus

1) State of Maharashtra)
through Govt. Pleader,)
having its office at High Court)
Annexe Building, Mumbai.)

2) Rossel Financial Services Limited)
Earlier Rossel Finance Limited)
having its office at Sterling)
Centre, 2nd Floor, Dr.Annie Besant)
Road, Worli, Bombay-400 018.)

3) Official Liquidator, High Court,)
Bombay of M/s.Rossel Financial)
Services, Ltd.,)..Respondents

Mr.Satish L.Maneshinde with Mr.Vivek Sharma for the petitioner.

Mr.P.S.Hingorani APP for the State.

Mr.A.Ramakrishnan for Respondent No.2.

Coram : R.S.Mohite,J

Date : 27.7.2006.

JUDGMENT :-

1. This is a petition seeking to quash and set aside the order issuing process and Criminal Complaint No.127/S/1997 pending on the file of the Metropolitan Magistrate, 7th Court Dadar, Mumbai. The said Complaint is one under Section 630 of the Companies Act and process has been issued by the

Metropolitan Magistrate, 7th Court, Dadar, Mumbai on 14.5.1997.

2. The facts of the case as can be seen from the Complaint filed before the Metropolitan Magistrate and other material on record are as follows :-

(a) On 17.4.1985 the Complainant company purchased the disputed flat in Building no.1 of Twin Towers Premises Co-operative Housing Society situated at Veer Savarkar Marg, Prabhadevi, Mumbai-400 025 for an amount of Rs.44 lakhs. This flat was purchased from M/s.Scale Investments Limited who by their letter dated 17.4.1985 confirmed the receipt of Rs.44/- lakhs and also confirmed the transaction including the handing over of the vacant possession of the flat alongwith keys to the Complainant. There was an existing Co-operative Society and consequent to this transaction, share certificate in respect of the flat was transferred in the name of the Complainant company prior to the filing of the Complaint under Section 630 of the Companies Act.

(b) The present applicant was working as a Managing Director of the Complainant company prior to 6.10.1994. He was put in possession of the flat in his capasity as a Managing Director on the understanding that since the flat belonged to the Complainant company, he would vacate and hand over

the same as soon as he ceased to be with the Company.

(c) On his resignation the applicant/accused refused to hand over possession inspite of written request.

(d) In the meanwhile, as on 3.10.1985 the shareholders of the Complainant Company had objected to purchase of the said flat, the Complainant company agreed to sell the said flat to another company by name Ross Murarka (India) Private Limited which was also managed by the present applicant/accused. Accordingly, unregistered agreement for sale came to be executed on 19.11.1995 and an amount of Rs.44 lakhs came to be paid by Ross Murarka India Private Limited to the Complainant company. On 25.1.1988 a further amount of Rs.21 lakhs is said to have been paid by Ross Murarka India Private Limited to the Complainant company. However, though this agreement of sale contemplated the execution of the conveyance, the conveyance was not executed because necessary permission under Section 37-I was never granted and when the parties applied for the said permission, the income tax authorities passed an order under Section 269 acquiring the flat. The Complainant company as well as Ross Murarka India Private Limited initially filed a joint petition in this Court which came to be allowed and this Court directed the income tax

authorities to give hearing. After such hearing, a fresh order acquiring the flat came to be passed by the Income Tax Department on 21.3.2003. In March-2003 Ross Murarka India Private Limited filed a 2nd Writ petition being Writ Petition No.607/2003 and that Writ petition was admitted and interim relief relating to possession and further proceedings was granted against the Income Tax Department and is presently running against the Income Tax Department. The net result of the interim order is that the acquisition proceedings by the Income Tax Department are kept in abeyance and cannot be completed.

(e) On 30.6.1995 the Complainant filed a suit bearing Suit No.1562/1995 against Ross Murarka India Private Limited seeking a declaration that the agreement dated 25.1.1998 was a nullity. This suit was dismissed for non prosecution on 31.10.2001.

(f) In April-1997 the Complainant company filed the present Writ petition.

(g) On 23.4.1997 Ross Murarka (India) Private Limited filed a suit for specific performance of the agreement dated 25.1.1998.

3. It is sought to be contended at this stage that the Complainant company has no title to the premises

and in any case their title to the said premises is seriously disputed. It is contended that the settled position of law by the Apex Court in the case of **Damodar Das Jain V/s. Krishna Charan Chakraborty & Anr. reported in 1935 TAX L.R. 2018,** is that if there were complicated questions of civil law involved, the Magistrate has no jurisdiction to decide the same in proceedings under 630 of the Companies Act. There is no dispute about this proposition. However, on the facts of the case, I do not find that there is any complicated question of civil law relating to the title of the flat involved in this petition. It is averred in the Complaint that the share certificates in respect of the said flat were already transferred in the name of the Complainant company prior to the institution of Complaint. It is held by this Court that in a Tenant Co-partnership Housing Society, title to the flat remains with the society. Right to occupy the flat however, flows from the ownership of the shares. Such share is not immovable property and transfer thereof does not require registration. Section 630 of the Companies Act provides the penalty for wrongful withholding of property. It inter alia provides that if any officer or employee of a Company wrongfully obtains possession of any property of a company; or having such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or

directed in the articles and authorised by this Act; he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine that may extend to Rs.10,000/-. He can also be asked by the Court to deliver such property.

4. In so far as the contention that the property now belongs to Ross Murarka (India) Private Limited in view of the agreement of sale dated 19.11.1985, it is very clear from the record that no conveyance was executed and this sale was never completed. There is also no transfer of the names in the share certificates in favour of Ross Murarka (India) Private Limited. In the circumstances, as of now, it cannot be said that there is any complicated question of civil law as regards the ownership of the said property.

5. In this regard it may also be seen that the suit filed by the Ross Murarka India Private Limited is only for specific performance of the agreement dated 19.11.1985. Their suit is not for declaration of title or a suit based on title.

6. Advocate appearing for the petitioner sought to rely upon the judgment of the Apex Court in the case of **Madhavrao V/s. Sambhajirao reported in AIR 1988 SC 709.** Reliance was placed upon the finding of the Apex Court in paragraph-7 to the effect that where

in the opinion of the Court, chances of an ultimate conviction are bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the same should be quashed. I have not formed any such opinion and the forming of any such opinion would be pre-mature.

7. In the net result, rule is discharged.

8. Advocate for the petitioner states that he is now residing out of the country and that he may be exempted from appearing in the trial. He states that the plea of the accused will be recorded through his Counsel who will attend all dates. The accused will however, remain present if and when 313 statement is required to be recorded by the Magistrate. On this assuarance and on such statement and assurance given which is accepted, the petitioner is exempted from appearing in the Magistrate Court till the stage of the 313 statement and trial will proceed against him in his absence. Petition stands disposed off. On the request made by Advocate for the petitioner, it is directed that the matter should be taken up on the board by the Magistrate on 8th September 2006.

(R.S.Mohite,J)